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July 15, 2016

Jan Witold Baran
jbaran@wileyrein.com
OFFICE OF GENERAL COUNSEL
202.719.7330

Mr. Jeff S. Jordan, Assistant General Counsel
Attn: Mary Beth deBeau, Paralegal
Office of Complaints Examination and Legal Administration
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Matter Under Review 7070

Dear Mr. Jordan:

On May 31, 2016, the Federal Election Commission ("FEC" or "Commission") notified our clients, the Congressional Leadership Fund and its treasurer, Caleb Crosby, in his official capacity (collectively, "CLF"), of a complaint filed by the American Democracy Legal Fund ("ADLF") against CLF and Congressman Paul Ryan. CLF is registered with the FEC as an independent expenditure-only committee – i.e., a "super PAC."

The complaint's central allegation is that, by "hand-selecting and personally offering . . . a leadership role" at CLF to Mr. Mason Fink, Congressman Ryan and CLF violated 52 U.S.C. § 30125. Compl. at 1. This provision prohibits federal candidates and officeholders from controlling an organization whose funding is not subject to the limitations and prohibitions of federal campaign finance law. However, the complaint rests entirely on an anonymously sourced, factually inaccurate newspaper article that misstates both CLF's internal personnel procedures and Congressman Ryan's relationship to CLF. As this submission demonstrates, Congressman Ryan has no authority to make decisions regarding CLF personnel, nor does he otherwise control CLF within the meaning of 52 U.S.C. § 30125(e)(1) and the corresponding regulations at 11 C.F.R. §§ 300.2, 300.60, and 300.61. Accordingly, the Commission should find no reason to believe that CLF violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), and close the file in this matter.

FACTUAL BACKGROUND

CLF registered with the FEC as a super PAC in 2011, and much of the committee's original leadership remained involved with the organization until 2016. See Declaration of Mike Shields ("Shields Decl.") at ¶ 6. At the beginning of this year, CLF was managed by a Board of Directors consisting of four founding members: Norm Coleman, Fred Malek, Tom Reynolds, and Vin Weber. *Id.* at ¶ 7.



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Several months ago, three of the board members sought to transition out of their existing positions, and CLF President Mike Shields concurrently outlined a plan to reshape the super PAC's board. Id. ¶ 8. The initial reorganization plan called for acceptance of the resignations of Messrs. Coleman, Reynolds, and Weber from the board, appointment of Mr. Malek to serve as the Chairman of the board, immediate appointment of a second board member to serve with Mr. Malek, and, at a later date, identification and appointment of additional board members.

CLF considered several candidates to immediately fill the vacant board seat alongside Mr. Malek. Id. ¶ 9. One person CLF identified as a potential candidate was Mr. Fink, a "former private equity analyst" who was nationally known for his "deep ties in the finance and investment worlds." Philip Rucker, *Bush Lands Romney Finance Director to Lead Super PAC Fundraising*, Washington Post (Mar. 18, 2015). Mr. Fink is a highly successful political fundraiser who served as the finance director for Mitt Romney's 2008 and 2012 presidential runs and more recently oversaw fundraising for the Right to Rise super PAC. Shields Decl. ¶ 9.

After CLF's leadership discussed the matter internally, Mr. Shields approached Mr. Fink about his interest in serving on CLF's board. Id. at ¶ 10. Mr. Fink considered the matter and ultimately informed Mr. Shields that he would be willing to serve if offered the position. Id. Mr. Shields then recommended to the existing board that Mr. Fink be appointed to the newly constituted CLF board. Id.

At the board's May 6, 2016, meeting, the board considered Mr. Shields's overall restructuring plan and, as outlined in the minutes of that meeting, adopted a series of resolutions implementing his proposals. Id. ¶ 11. At the meeting's conclusion:

- Mason Fink was appointed to the board and Secretary of CLF;
- Norm Coleman, Tom Reynolds, and Vin Weber resigned from the board; and
- Fred Malek was appointed Board Chairman.



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Id. ¶¶ 11-12. Following the board's meeting, Mr. Shields contacted Mr. Fink to inform him of the board's action, and Mr. Coleman subsequently called to formally convey the offer. Id. ¶ 13. Mr. Fink thereafter accepted the appointments. Id. As relevant to the complaint, Congressman Ryan was neither a member of CLF's board, nor was he otherwise empowered or authorized to appoint CLF board members or other CLF personnel. Id. ¶¶ 7, 11, 12, 14.

Subsequent to these events, ADLF filed its FEC complaint, alleging that Congressman Ryan "is controlling an independent expenditure-only committee by hand-selecting and personally offering Mr. Mason Fink a leadership role with [the] Congressional Leadership Fund." Comp. at 1. The factual basis for ADLF's allegation was a *Politico* story stating, according to the complaint, that "Mr. Ryan 'personally approached' Mr. Mason Fink, a Republican advisor and personal friend of Mr. Ryan, to ask him to 'take the job' of director of fundraising for [the] Congressional Leadership Fund." Id. at 2. The complaint concluded that this fact "unmistakably exposes Mr. Ryan exercising control over [the] Congressional Leadership Fund in violation of 52 U.S.C. § 30125(e)(1)."

THE LAW

The FECA provides that an entity "directly or indirectly established, financed, maintained or controlled by" a federal candidate or officeholder may not receive or spend funds that fail to comply with the Act's contribution limits and source prohibitions. 52 U.S.C. § 30125(e); see also 11 C.F.R. §§ 300.60, 300.61. Federal super PACs are not subject to the Act's contribution limits and source prohibitions. Therefore, they cannot be "established, financed, maintained, or controlled" by a federal candidate or officeholder. See id.

The Commission considers "the context of the overall relationship" to determine whether the "established, financed, maintained or controlled" test has been satisfied, with a particular emphasis on the following ten factors:

- (i) Whether a [person], directly or through its agent, owns controlling interest in the voting stock or securities of the entity;
- (ii) Whether a [person], directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through



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provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(iii) Whether a [person], directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity;

(iv) Whether a [person] has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the [person] and the entity;

(v) Whether a [person] has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the [person] and the entity;

(vi) Whether a [person] has any members, officers, or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship between the [person] and the entity, or that indicates the creation of a successor entity;

(vii) Whether a [person], directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;

(viii) Whether a [person], directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;

(ix) Whether a [person], directly or through its agent, had an active or significant role in the formation of the entity; and

(x) Whether the [person] and the entity have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the [person] and the entity.

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11 C.F.R. § 300.2(c).

DISCUSSION

ADLF's complaint against CLF must be dismissed for three principal reasons. *First*, a majority of current FEC commissioners have made clear that a complaint that relies solely on an unidentified, uncorroborated source in a newspaper article cannot be the basis for finding there is reason to believe that there is a violation of the Act. *Second*, the facts attested to and accompanying documentation in this submission make clear that the complaint's central charge – that Congressman Ryan was “hand-selecting and personally offering . . . a leadership role” in CLF to Mr. Fink – is incorrect. *Third*, even if the allegation in the complaint were accurate – and it is not – the complaint fails to plead sufficient other facts that would enable the Commission to conclude that Congressman Ryan unlawfully controlled CLF.

A. The Complaint's Sole Factual Support – a Single, Anonymous Source in a Newspaper Article – Does Not Provide a Basis for Finding Reason to Believe That a Violation Occurred.

At the threshold, a “reason-to-believe finding by the Commission must be based on specific facts from reliable sources.” MUR 6002, Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter, and Donald F. McGahn (Aug. 13, 2010). Allegations “based upon unsworn news reports, anonymous sources, and an author's summary conclusions and paraphrases provide questionable legal basis to substantiate a reason to believe finding,” MUR 6661 (Robert E. Murray), Statement of Reasons of Commissioners Matthew S. Petersen, Lee E. Goodman, and Caroline C. Hunter (June 2, 2016) at 8, as the “probative and evidentiary value of [such sources] is quite limited,” *id.* at 7, and the “credibility and accuracy [of such anonymous sources] are difficult to ascertain,” MUR 6002, Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter, and Donald F. McGahn (Aug. 13, 2010), at 6.

Indeed, as other commissioners have observed, “purported information from . . . ‘anonymous sources’ . . . can and should be afforded no weight as no details are provided and there is no way to verify the information.” MUR 5845,



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Factual & Legal Analysis for Citizens for Truth at 5.¹ In fact, a majority of commissioners believe that a legal theory that rests on an article that "does not identify the source" and is based "wholly on speculation" is "tenuous," "unconvincing," and cannot "form an adequate basis to find reason to believe that a violation of the FECA has occurred." MUR 5866, Factual & Legal Analysis for Friends of Conrad Burns – 2006 at 4; MUR 5845, Factual & Legal Analysis for Citizens for Truth at 6 n.8.²

Here, the complaint rests entirely on a single sentence written by a reporter summarizing what an anonymous source apparently told him. This provides nothing more than the type of specious and speculative accusations the Commission has already labeled an insufficient basis for finding reason to believe that a violation occurred. Accordingly, this matter should be dismissed at the threshold.

**B. The Facts Underlying the Complaint Are Factually Wrong:
CLF – Not Congressman Ryan – Engaged and Appointed
Mr. Fink to the CLF Board.**

The complaint states that Congressman Ryan is controlling CLF "by hand-selecting and personally offering Mr. Mason Fink a leadership role with [the] Congressional Leadership Fund." This is categorically false.

First, the decision to appoint Mr. Fink to leadership positions at CLF was made by CLF's board and not anyone else. Shields Decl. ¶ 15. Second, CLF has never authorized Congressman Ryan to act on its behalf for anything, much less to hire, fire, or otherwise dictate the super PAC's management or personnel decisions. Id. ¶ 14. Thus, the complaint's claim that Congressman Ryan has authority to

¹ Commissioners Weintraub and Walther supported inclusion of this language in the Factual & Legal Analysis. See Certification of May 3, 2007 in MUR 5845.

² Commissioners Weintraub and Walther supported this Factual & Legal Analysis as well. See Certification of June 21, 2007 in MUR 5866. The case for a dismissal is particularly strong where, as here, there is "direct refutation" of the underlying charge. MUR 5845, Factual & Legal Analysis for Citizens for Truth at 6 n.8.



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control CLF's management and personnel decisions is false, and without any facts supporting its legal claim, the complaint must be dismissed.³

C. The Complaint Fails to Address, Much Less Prove, 90% of the Elements for Determining Whether Congressman Ryan "Controls" CLF.

The Complaint correctly recognizes that "whether an officeholder or candidate 'controls' an independent expenditure-only committee" will depend on "the overall relationship between the [candidate or officeholder] and the entity" – in this case, CLF – by applying the ten-factor test found in 11 C.F.R. § 300.2(c)(2). Compl. at 3 & n.9; see also MUR 5952 (Clinton Committee), Factual & Legal Analysis at 12. Yet the complaint fails to even mention – much less provide factual support for – nine of the factors. Thus, even if one of the factors could affirmatively support the complaint's theory – and, for the reasons discussed, that is not the case here – this is but one factor out of ten. The complaint does not dispute that the other nine factors align against a finding of impermissible control which, in fact, is precisely the case here. See, e.g., Shields Decl. ¶ 16. Accordingly, the complaint should be dismissed for this reason as well. See MUR 5943 (Take Initiative America LLC), Factual and Legal Analysis at 8-9 (dismissing "establish, finance, maintain, or control" allegation where the complaint's cited facts drew only "tenuous connections" to a violation and the respondent's sworn affidavit suggested other components of the ten-factor test were inapplicable).⁴ Cf. MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee), Statement of Commissioners David Mason, Karl Sandstrom, Bradley Smith, and Scott Thomas (Dec. 21, 2000) (finding no reason to believe, in part, where the complaint "failed

³ The complaint makes several other subsidiary factual assertions that, while not necessarily material from a legal perspective, are also false and further underscore the lack of credibility to be afforded ADLF's complaint. For example, the complaint (at 2) claims that Mr. Fink's new position at CLF would be as "director of fundraising." But nothing in the *Politico* article states that this would be his position; as discussed above, Mr. Fink was brought on as a board member and corporate secretary.

⁴ See also MUR 6753 (People for Pearce), First General Counsel's Report at 6 (June 19, 2014) (noting that "the presence of any one or more factors alone may not bring a particular relationship within the prohibition").



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completely to address, much less provide any evidence regarding, [an] essential element of the violation it alleged").

CONCLUSION

CLF's choice to add Mr. Fink to its board of directors was a business decision – made by CLF's existing board – to add a proven fundraiser to its team. Congressman Ryan was not a part of that decision-making process, nor does he otherwise exercise any control over CLF. Accordingly, the Commission should find no reason to believe that CLF violated the FECA and close the file in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Caleb P. Burns", written in a cursive style.

Jan Witold Baran
Caleb P. Burns
Andrew G. Woodson

Enclosure

180440444071

BEFORE THE FEDERAL ELECTION COMMISSION

American Democracy Legal Fund)

v.)

Representative Paul Ryan *et al.*)

Matter Under Review 7070

DECLARATION OF MIKE SHIELDS

I, Mike Shields, hereby declare as follows:

1. I have personal knowledge of all information contained in this Declaration.

2. Currently, I am the President of the Congress Leadership Fund ("CLF"), an independent expenditure-only committee -- i.e., a "super PAC."

3. On May 31, 2016, CLF received notification that the American Democracy Legal Fund ("ADLF"), filed a complaint with the Federal Election Commission against CLF and Congressman Paul Ryan.

4. I have read this complaint and am familiar with its contents.

5. My understanding is that the complaint alleges CLF and Congressman Ryan violated the prohibition on federal candidates/officers/holders controlling an organization, such as a super PAC, whose funding is not subject to the limitations and prohibitions of federal campaign finance law. The complaint makes this allegation because, in its own words, Congressman Ryan was "hand-selecting and personally offering . . . a leadership role" within CLF to Mr. Mason Fink. I have investigated the circumstances surrounding the complaint, which are detailed in this Declaration.

6. CLF registered with the FEC as a super PAC in 2011, and much of the committee's original leadership remained involved with the organization until 2016.

7. At the beginning of this year, CLF was managed by a Board of Directors consisting of four board members: Norm Coleman, Fred Malek, Tom Reynolds, and Vin Weber.

8. Several months ago, three of the board members sought to transition out of their existing positions and concurrently outlined a plan to reshape the super PAC's board. The initial reorganization plan called for acceptance of the resignations of Messrs. Coleman, Reynolds, and Weber from the board, appointment of Mr. Malek to serve as the Chairman of the board, immediate appointment of a second board member to serve with Mr. Malek, and, at a later date, identification and appointment of additional board members.

9. CLF considered several candidates to immediately fill the vacant board seat alongside Mr. Malek. One person CLF identified as a potential candidate was Mr. Fink, who had served as the former finance director for Mitt Romney's 2008 and 2012 presidential runs, had more recently overseen fundraising for the Right to Rise super PAC, and had ties with numerous individuals in the financial and investment sectors.

10. After CLF's leadership discussed the matter internally, I approached Mr. Fink about his interest in serving on CLF's board. Mr. Fink considered the matter and ultimately informed me that he would be willing to serve if offered the position. I then recommended to the existing board that Mr. Fink be appointed to the newly constituted CLF board.

11. At the board's May 6, 2016, meeting, members considered my overall restructuring plan and, as outlined in the draft minutes of that meeting, adopted a series of resolutions implementing my proposals. The minutes of the May 6 meeting and the resolutions themselves are attached as Exhibits A and B to this declaration. (I anticipate that the draft minutes will be formally ratified at CLF's next board meeting, but I can attest to their accuracy based on my recollection of actions taken at the meeting.)

12. The meeting minutes reflect the following actions:

- Mason Fink was appointed to the board and Secretary of CLF;
- Norm Coleman, Tom Reynolds, and Vin Weber resigned from the board; and
- Fred Malek was appointed Board Chairman.

13. Following the board's meeting, I contacted Mr. Fink to inform him of the board's action, and Mr. Coleman subsequently called to formally convey the offer. Mr. Fink thereafter accepted the appointments.

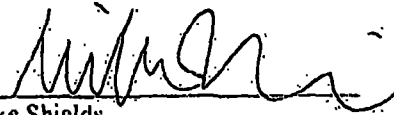
14. CLF has never authorized Congressman Ryan to act on its behalf for anything, much less to hire, fire, or otherwise impact the super PAC's personnel or management decisions.

15. The decision to appoint Mr. Fink to leadership positions at CLF was made by CLF's board and not anyone else.

16. More broadly, Congressman Ryan was not involved in forming CLF, he does not own a controlling interest in CLF, and neither the Congressman nor his campaign committee provides significant or ongoing financial resources to CLF. Furthermore, CLF and the Ryan campaign have no formal or ongoing relationship based on a similar pattern of contributions from or expenditures to the same persons.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.

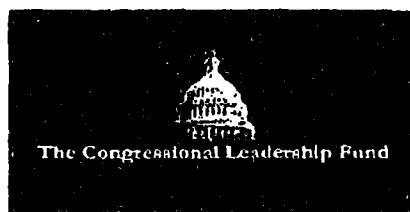
Dated this 14th day of July, 2016

A handwritten signature in dark ink, appearing to read "Mike Shields", written over a horizontal line.

Mike Shields
President, Congressional Leadership Fund
1747 Pennsylvania Ave., N.W.
5th Floor
Washington, D.C. 20006

Exhibit A

1704440034003



**Congressional Leadership Fund
Board Meeting Minutes
May 6, 2016**

Attendees:

Chairman Norm Coleman
Fred Malek
Tom Reynolds
Vin Weber

Minutes:

The meeting was called to order at 1:15 pm.

Chairman Coleman invited CLF President Mike Shields to explain the purpose for today's Board Meeting.

President Shields outlined a plan to reshape the CLF Board, and invited the current Board to consider the draft resolutions which would institute the changes.

President Shields explained that Mason Fink has expressed an interest in joining the Board. Mr. Fink is an experienced fundraiser, having worked for Romney for President in 2008 and 2012, as well as Right to Rise.

Current CLF Board Chairman Norm Coleman, Board Secretary Tom Reynolds and Board member Vin Weber all indicated an interest in stepping off the Board at this time.

President Shields read through the proposed resolutions before the Board, namely to:

1. Bring Mason Fink onto the Board, as Secretary
2. Remove Norm Coleman, Tom Reynolds and Vin Weber from the Board
3. Change the Board membership from four to two members
4. Appoint Fred Malek to serve as Chairman of the Board
5. Ratify Mike Shields as President

After discussion, Mr. Weber moved to approve the resolutions, and Mr. Reynolds seconded. The resolution was approved by voice vote.

Chairman Malek asked whether there may be a way to recognize the leadership that outgoing CLF Chairman Norm Coleman provided to the organization. A discussion was had about how to go about doing so. Chairman Malek moved that Mr. Coleman be given the title of Founder in an ex officio capacity. Mr. Weber seconded the motion, and it was approved by voice vote.

Having concluded the business of the meeting, the meeting was adjourned.

Congressional Leadership Fund Board Meeting Resolutions:

WHEREAS, the Board of Directors (the "Board") of Congressional Leadership Fund ("CLF") hereby desires to reconstitute the Board as set forth below, and

WHEREAS, Norm Coleman, Tom Reynolds and Vin Weber each has submitted to the Board his written resignation as director of CLF, with each such resignation to be effective after the resolutions set forth herein have been adopted, it hereby is

RESOLVED, that pursuant to Section 3.02 of CLF's Bylaws, after giving effect to the other resolutions set forth herein, the number of directors on the Board shall be changed from four (4) to two (2).

WHEREAS, Mason Fink has expressed interest in joining the Board, and the Board deems it to be in the best interests of CLF to take the following action, it hereby is

RESOLVED, that pursuant to Article II of CLF's Bylaws, Mason Fink is hereby elected to be a director of the Board, to serve until his successor is elected and qualified or until his prior resignation or removal.

WHEREAS, Tom Reynolds has submitted to the Board his written resignation as Secretary of CLF, and the Board deems it to be in the best interests of CLF to take the following actions, it hereby is

RESOLVED, that Mason Fink is hereby appointed to be Secretary of CLF, to serve until his successor is elected and qualified or until his prior resignation or removal;

FURTHER RESOLVED, that pursuant to Article V of CLF's Bylaws, Fred Malek is hereby appointed to serve as Chairman of the Board, to serve until his successor is elected and qualified or until his prior resignation or removal; and

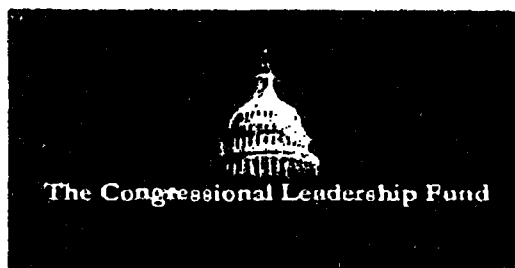
FURTHER RESOLVED, that the Board confirms and ratifies Mike Shields appointment as President of CLF, to continue to serve until his successor is elected and qualified or until his prior resignation or removal.

The above resolutions were adopted at a meeting of the Board at which a quorum was present. The meeting was held by telephone conference on May 6, 2016.

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Exhibit B

17044405408



Congressional Leadership Fund Board Meeting Resolutions:

WHEREAS, the Board of Directors (the "Board") of Congressional Leadership Fund ("CLF") hereby desires to reconstitute the Board as set forth below, and

WHEREAS, Norm Coleman, Tom Reynolds and Vin Weber each has submitted to the Board his written resignation as director of CLF, with each such resignation to be effective after the resolutions set forth herein have been adopted, it hereby is

RESOLVED, that pursuant to Section 3.02 of CLF's Bylaws, after giving effect to the other resolutions set forth herein, the number of directors on the Board shall be changed from four (4) to two (2).

WHEREAS, Mason Fink has expressed interest in joining the Board, and the Board deems it to be in the best interests of CLF to take the following action, it hereby is

RESOLVED, that pursuant to Article II of CLF's Bylaws, Mason Fink is hereby elected to be a director of the Board, to serve until his successor is elected and qualified or until his prior resignation or removal.

WHEREAS, Tom Reynolds has submitted to the Board his written resignation as Secretary of CLF, and the Board deems it to be in the best interests of CLF to take the following actions, it hereby is

RESOLVED, that Mason Fink is hereby appointed to be Secretary of CLF, to serve until his successor is elected and qualified or until his prior resignation or removal;

FURTHER RESOLVED, that pursuant to Article V of CLF's Bylaws, Fred Malek is hereby appointed to serve as Chairman of the Board, to serve until his successor is elected and qualified or until his prior resignation or removal; and

FURTHER RESOLVED, that the Board confirms and ratifies Mike Shields appointment as President of CLF, to continue to serve until his successor is elected and qualified or until his prior resignation or removal.

The above resolutions were adopted at a meeting of the Board at which a quorum was present. The meeting was held by telephone conference on May 6, 2016.

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